IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5191 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANAIYALAL MANILAL MEHTA

Versus

BANK OF BARODA

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Appearance:

MR KS JHAVERI for Petitioner

MR DARSHAN M PARIKH for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 24/08/2000

ORAL JUDGEMENT

1. The petitioner who was serving with the respondent Bank seeks a direction on the respondents to accept 10th July 1934 as his birth date, and reinstate him on that basis, by setting aside the order at Annexure-J to the petition dated 28-4-1992.

2. The petitioner joined the respondent Bank as a Clerk on 18th March 1957 and he was confirmed in that post on 18th March 1958. According to the petitioner, in his application he had mentioned his birth dated as 10th July 1934, but at the time of his confirmation he was asked for the proof, and since in his school leaving certificate his birth date was mentioned as 7th April 1932, the respondent directed the petitioner to correct his birth date to 7th April 1932. Thereafter, the petitioner made a representation in 1965 for correction of his birth date as 10th July 1934. According to the petitioner, that representation was accepted. For this purpose the petitioner relied upon the communication from the Head Office dated 2nd November, 1965, at Annexure-A to the petition. In that communication it was mentioned that, the affidavit of the petitioner was duly perused and his birth date was noted as 10th July 1934 as recorded with the LIC of India. According to the petitioner, on the basis of his birth date shown in the Insurance Policy, and his affidavit, the Bank had noted 10th July 1934 in the record as the petitioner's birth date. The petitioner relied upon the Provident Fund slip issued by the Bank which also showed his birth date as 10th July 1934. He further relied upon the Gradation List of Officers as on 31-12-1981, which also indicated in the column of birth date that 10th July 1934 was taken to be his birth date.

3. The petitioner was issued usual retirement notice on 28-1-1992, as per Annexure-D to the petition, on the footing that he was superannuating on 30-4-1992 on the basis of his birth date of 7-4-1932. The petitioner had approached this Court, and in Letters Patent Appeal No. 198 of 1992 decided on 24-4-1992 the Division Bench directed the respondent Bank to hear the petitioner on the question of his correct birth date. The petitioner was given permission to withdraw the petition with a liberty to challenge the order that may be passed against him. Thereafter, the order dated 28-4-1992 which has been challenged in this petition was passed. In that order the Assistant General Manager, Ahmedabad City, Region-1, without hearing the petitioner, came to a finding that the case of the petitioner that his case that his birth date was 10th July 1934 was an after thought, and that, he was trying to thereby get two years of extra service. The said authority brushed aside the letter dated 2nd November 1965 at Annexure-A to the petition from the Head Office to the Regional Office in which it was stated that the birth date 10th July 1934 of the petitioner was noted as recorded with the LIC, by

merely stating that it was an internal communication, without realising the weight of such communication. He also brushed aside the birth date noted in the gradation list published as on 31-12-1981 as 10th July 1934, and also in the P.F. statement.

4. Since the Head Office had taken note of the said birth date as stated in its communication at Annexure-A to the petition, it would be appropriate in this matter that a high authority of the respondent Bank of the rank of General Manager should consider the case of the petitioner afresh in light of the above earlier communication and other contemporaneous records, including the gradation list which came into existence much prior to the date of his superannuation. Having regard to the facts & circumstances of the case, it is directed that an officer not below the rank of a General Manager of the Respondent Bank should take a fresh decision in the matter, in accordance with law, and after giving an opportunity of hearing to the petitioner, within a period of two months from the date of receipt of the writ of this order. Rule is made absolute accordingly, with no order as to costs.

Dt: 24-8-2000 ( R.K. Abichandani, J )

/vgn.